

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments,)

FM Broadcast Stations.)

(Milner, Ellaville, and Plains, Georgia))

MB Docket No. 05-106
RM-11196

MAR 13 2005

NOTICE OF PROPOSED RULEMAKING

Adopted: March 16, 2005

Released: March 18, 2005

Comment Date: May 9, 2005

Reply Comment Date: May 24, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Linda A. Davidson ("Petitioner"), proposing the allotment of Channel 290A at Milner, Georgia, as the community's first local aural transmission service. To accommodate the proposed Milner allotment, Petitioner also proposes the substitution of Channel 232A for vacant Channel 290A at Ellaville, Georgia. Petitioner further requests the allotment of Channel 290A at Plains, Georgia, as its first local aural transmission service. Petitioner has expressed an interest in applying for Channel 290A at Milner and Channel 290A at Plains, if the requested channels are allotted.

2. Petitioner proposes the allotment of Channel 290A at Milner, Georgia, as the community first local service. Milner is an incorporated city located in Lamar County, Georgia listed in the 2000 U.S. Census with a population of 522 persons. To accommodate the proposed Milner allotment, Petitioner requests the substitution of Channel 232A for vacant Channel 290A at Ellaville, Georgia.¹ Moreover, Petitioner requests the allotment of Channel 290A at Plains, Georgia, as its first local aural transmission service. Plain is an incorporated town located in Plains County, Georgia listed in the 2000 U.S. Census with a population of 637 persons.

3. The Petitioner's proposal warrants consideration because it could provide the communities of Milner and Plains with its first local aural transmission service. A staff engineering analysis indicates that Channel 290A can be allotted to Milner in compliance with the Commission's rules provided there is a site restriction of 11.9 kilometers (7.4 miles) northeast at coordinates 33-09-44 NL and 84-04-51 WL. Channel

¹ Southern Broadcasting Companies, Inc. ("Southern Broadcasting") filed a Motion to Deny or Dismiss Petition for Rulemaking stating that the proposed Ellaville transmitter site was infeasible. Southern Broadcasting indicated that the Federal Aviation Administration ("FAA") would issue a no hazard determination for any site within the viable site area because it would create electromagnetic interference ("EMI") to aeronautical services. However, Southern Broadcasting withdrew this argument because the FAA issued a Determination of No Hazard to Air Navigation (Aeronautical Study 2004-ASO-4213-OE for the proposed Ellaville site, but reserved the right to raise this argument again should FAA change its EMI policy. Generally, at the allotment stage we only require a petitioner to show that a theoretical reference site exists from which a station can be operated in compliance with the Commission's rules. The reference site is presumed to be available and technically feasible but that presumption is rebuttable. *San Clemente California*, 3 FCC Rcd 6728 (MMB 1988), *appeal dismissed sub. nom.*; *Mount Wilson FM Broadcasters, Inc. v FCC*, 884 F.2d 1462 (D.C. Cir. 1989); *See also, San Clemente, California*, 10 FCC Rcd 8291 (1995).

232A can be allotted to Ellaville in compliance with the Commission's rules provided there is a site restriction of 14.5 kilometers (9.0 miles) east at coordinates 32-16-53 NL and 84-09-52 WL. Channel 290A can be allotted to Plains in compliance with the Commission's rules provided there is a site restriction of 14.7 kilometers (9.1 miles) northeast at coordinates 32-06-51 NL and 84-16-10 WL.

4. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 73.202(b), with respect to the following communities.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Milner, Georgia	-----	290A
Ellaville, Georgia	290A	232A
Plains, Georgia	-----	290A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

6. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before May 9, 2005, and reply comments on or before May 24, 2005, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Linda A. Davidson
2134 Oak Street, Unit C
Santa Monica, California 90405

7. Parties are required to file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.² This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

9. For further information concerning a proceeding listed above, contact Rolanda F. Smith, Media Bureau (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

² See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See 47 C.F.R. Section 1.420(d).)

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.